

**UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA**

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Benchmark Insurance Company,

Case No. 20-cv-908 (JRT/TNL)

Plaintiff,

v.

**ORDER**

SUNZ Insurance Company, et al.,

Defendants.

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On June 3, 2020, the Court ordered Plaintiff Benchmark Insurance Company to deposit \$20,533,594 in interpleader funds with the Court's registry. (ECF No. 154). Defendant SUNZ Insurance Company ("SUNZ") has filed several motions under Federal Rule of Civil Procedure 67(b) and Local Rule 67.2, seeking permission withdraw the following amounts from the interpleaded funds:

- \$85,749 (ECF No. 196)
- \$548,489 (ECF No. 199)
- \$132,648 (ECF No. 202)
- \$30,466 (ECF No. 205)
- \$1,003,844 (ECF No. 208)
- \$271,918 (ECF No. 212)
- \$4,352 (ECF No. 216)
- \$2,591,732 (ECF No. 281).

Benchmark has alleged in its complaint that each of these amounts may be subject to claim by another Defendant. No responses have been filed to the motions located at ECF Numbers 196, 199, 202, and 205 and the four Defendants who Benchmark alleges may

have a claim to those funds have not appeared in this matter. Three Defendants, Century Employer Organization, LLC, Butler America Holdings, Inc., and Payday, Inc., have filed memoranda opposing the motions located at ECF Numbers 208, 212, and 216, respectively. The five Defendants who Benchmark alleges may have a claim to the sum at issue in ECF Number 281 have all disclaimed their respective interests. (*See* ECF Nos. 179, 187, 184, 259, and 260).

Because the parties with claims to the funds that are at issue in ECF Number 281 have all disclaimed their interest and not responded to the motion, the Court will grant that motion. The Court will deny the remaining motions. With regard to the motions filed at ECF Numbers 196, 199, 202, and 205, the Court is not willing to extinguish the interests of parties who have not appeared in this matter by way of a Local Rule 67.2 motion. Instead, by separate order, the Court will require SUNZ to notify those Defendants that they must appear and then seek default judgment if they do not. *See Peyton's Se., Inc. v. Redtag Biz, Inc.*, No. 02-cv-4863, 2003 WL 22077749, at \*1 (D. Minn. Aug. 5, 2003) (granting default judgment against non-appearing defendant in interpleader action). With regard to the motions located at ECF Numbers 208, 212,<sup>1</sup> and 216, the parties have identified disputes regarding certain contracts and rights and obligations the parties had regarding the interpleaded funds. The Court will also not decide these disputes in motions brought under Local Rule 67.2. Instead, the parties must engage in whatever discovery they

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<sup>1</sup> SUNZ also suggested the Court should grant the motion located at ECF Number 212 because the party named in the complaint is Butler America Holdings, Inc. and the party that filed the memorandum opposing that motion referred to itself as Butler America, Inc. (ECF No. 303). Butler America Holdings, Inc. has since filed a memorandum clarifying that this was a typographical error. (ECF No. 311). The Court will not grant SUNZ's motion on the basis of a technicality.

deem appropriate and is permitted under the rules and then file their respective motions for summary judgment. The Court will discuss these matters with the parties at the upcoming pretrial scheduling conference to facilitate this process.

Therefore, based upon the record, memoranda, and proceedings herein, **IT IS HEREBY ORDERED** as follows:

1. SUNZ Insurance Company's Motion to Withdraw Money from the Court Registry under Federal Rule of Civil Procedure 67(b) and Local Rule 67.2 (ECF No. 196) is **DENIED**.

2. SUNZ Insurance Company's Motion to Withdraw Money from the Court Registry under Federal Rule of Civil Procedure 67(b) and Local Rule 67.2 (ECF No. 199) is **DENIED**.

3. SUNZ Insurance Company's Motion to Withdraw Money from the Court Registry under Federal Rule of Civil Procedure 67(b) and Local Rule 67.2 (ECF No. 202) is **DENIED**.

4. SUNZ Insurance Company's Motion to Withdraw Money from the Court Registry under Federal Rule of Civil Procedure 67(b) and Local Rule 67.2 (ECF No. 205) is **DENIED**.

5. SUNZ Insurance Company's Motion to Withdraw Money from the Court Registry under Federal Rule of Civil Procedure 67(b) and Local Rule 67.2 (ECF No. 208) is **DENIED**.

6. SUNZ Insurance Company's Motion to Withdraw Money from the Court Registry under Federal Rule of Civil Procedure 67(b) and Local Rule 67.2 (ECF No. 212) is **DENIED.**

7. SUNZ Insurance Company's Motion to Withdraw Money from the Court Registry under Federal Rule of Civil Procedure 67(b) and Local Rule 67.2 (ECF No. 216) is **DENIED.**

8. SUNZ Insurance Company's Motion to Withdraw Money from the Court Registry under Federal Rule of Civil Procedure 67(b) and Local Rule 67.2 (ECF No. 281) is **GRANTED.**

9. The 30-day waiting period provided for by D. Minn. LR 67.2 is waived.

10. Upon entry of this Order, the Clerk of Court is directed to issue a check in the amount of \$2,591,732, which funds are now on deposit in the Court's registry, payable to SUNZ Insurance Company.

11. All prior consistent orders remain in full force and effect.

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12. Failure to comply with any provision of this Order or any other prior consistent order shall subject the non-complying party, non-complying counsel and/or the party such counsel represents to any and all appropriate remedies, sanctions and the like, including without limitation: assessment of costs, fines and attorneys' fees and disbursements; waiver of rights to object; exclusion or limitation of witnesses, testimony, exhibits, and other evidence; striking of pleadings; complete or partial dismissal with prejudice; entry of whole or partial default judgment; and/or any other relief that this Court may from time to time deem appropriate.

Date: July 24, 2020

s/ Tony N. Leung  
Tony N. Leung  
United States Magistrate Judge  
District of Minnesota

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